

1 R. Joseph Trojan CA Bar No. 137,067  
2 trojan@trojanlawoffices.com  
3 TROJAN LAW OFFICES  
4 9250 Wilshire Blvd., Suite 325  
5 Beverly Hills, CA 90212  
6 Telephone: (310) 777-8399  
7 Facsimile: (310) 777-8348  
8 **Attorneys for Plaintiff,**  
9 **PHOENIX SOLUTIONS, INC.**

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO**

13 PHOENIX SOLUTIONS, INC., a  
14 California corporation,

15 Plaintiff,

16 v.

17 WELLS FARGO BANK, N.A., a  
18 Delaware corporation,

19 Defendant.

CASE NO. CV08-0863 MHP

**DECLARATION OF R. JOSEPH  
TROJAN IN SUPPORT OF  
PLAINTIFF PHOENIX SOLUTIONS,  
INC.'S BRIEF RE: DEFENDANT  
WELLS FARGO BANK, N.A.'S  
PROPOSED PROTECTIVE ORDER**

**Hon. Marilyn H. Patel**

**DECLARATION OF R. JOSEPH TROJAN**

I, R. Joseph Trojan, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California and the United States District Court for the Northern District of California. I am the owner of Trojan Law Offices, the attorneys of record for Plaintiff Phoenix Solutions, Inc. ("Phoenix"). I have personal knowledge of the facts stated herein. If called upon to do so, I could and would competently testify that:

2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter received by undersigned from Mr. Eugene M. Paige, counsel for Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), dated July 1, 2008.

3. Attached hereto as **Exhibit 2** is a true and correct copy a webpage (<https://www.delphion.com/cgi-bin/patsearch>) showing the result of a Delphion search for patents issued to Wells Fargo in the United States Patent Office for "speech recognition" technology.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of September, 2008, in Beverly Hills, California.

/s/R. Joseph Trojan

R. Joseph Trojan

# **EXHIBIT 1**

LAW OFFICES  
**KEKER & VAN NEST**  
LLP

710 SANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 391-5400  
FAX (415) 397-7188  
WWW.KVN.COM

EUGENE M. PAIGE  
EPAIGE@KVN.COM

July 1, 2008

**VIA FACSIMILE AND U.S. MAIL**

R. Joseph Trojan, Esq.  
Trojan Law Offices  
9250 Wilshire Boulevard, Suite 325  
Beverly Hills, CA 90212

RE: *Phoenix Solutions, Inc. v. Wells Fargo Bank, N.A.*  
No. CV-08-0863 MHP

Dear Joe:

Thank you for your letter of yesterday afternoon.

In that letter, Phoenix proposed modifying the draft protective order such that J. Nicholas Gross would be permitted access to highly confidential materials marked as "Attorney's Eyes Only" in this litigation. We understand that Mr. Gross prosecuted all four of the patents-in-suit, and surmise from certain published pending applications that he continues to prosecute patents in the same family on behalf of Phoenix while this litigation is pending.

Under the circumstances, Wells Fargo cannot agree that Mr. Gross should have access to highly confidential material in this litigation unless he agrees to cease prosecuting patent applications in this subject matter area on behalf of Phoenix until at least a year after the termination of this litigation. Although the protective order contains language restricting the use of information that may be produced in this litigation to prosecuting, defending and attempting to settle the litigation only, and without questioning the good faith with which Mr. Gross would undertake that obligation, it is simply too hard for an attorney prosecuting patents on behalf of a client to segregate the knowledge he gains through discovery into what he may use and what he may not use while prosecuting patents. That is why a California federal district court has recently ruled that "the patent prosecutors for any party should make a choice: either prosecute future patents in this family of patents, or litigate the patent at issue, but not both." *Presidio Components, Inc. v. American Tech. Ceramics Corp.*, 546 F. Supp. 2d 951 (S.D. Cal. 2008).

If Mr. Gross is willing to cease prosecuting patents in this subject area, then Wells Fargo may be able to agree to permit him to access the highly confidential material produced in this litigation, and we would be happy to supply draft language regarding the proposed prosecution

R. Joseph Trojan, Esq.

July 1, 2008

Page 2

bar for inclusion in the draft stipulated protective order. If Mr. Gross intends to continue prosecuting patents in this area on behalf of Phoenix, Wells Fargo must insist that Mr. Gross not be permitted access to documents marked as "Attorney's Eyes Only" in this litigation. Please let me know which option Phoenix would prefer.

Thank you for your attention to this matter, and please do not hesitate to contact me should you wish to discuss it further.

Sincerely,

A handwritten signature in black ink, appearing to be "E. Paige", written in a cursive style.

Eugene M. Paige

EMP:daf

# **EXHIBIT 2**

No active trail

# DELPHION

RESEARCH PRODUCTS INSIDE DELPHION

My Account Search: Quick/Number Boolean Advanced Derwent Help

Current Results PDF Express Data Extract Snapshot Clustering File Histories

**Result Set for Query: (("wells fargo") <in> PA)** [Save Search/Create Alert](#) [help](#)

Search

Select Collection(s): **US (Granted)**  
US (Applications)  
European (Granted)  
European (Applications)  
German (Granted)

Select Pub. Date: All dates

Use Relevancy Score? ☒ Yes ☐ No

☒ Front Pages ☐ Full Text




**To use this tool:**  
1. Use text box and selection fields to refine or replace query  
2. Use Select, Order, and Add controls to purchase items  
3. Use controls at bottom to show or hide fields


Collections searched: **US (Granted)**

23 matches found of 4,490,300 patents searched Displaying results **1 - 23** of **23**


Add ☐ selected items to Work File: Create New Work File [Add](#)  
☒ all 23 items (up to 20,000)

PDF		Publication Title (To sort a column, click label at top)	Pub. Date	Filed	Score ▼
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US7392935</a> Method and apparatus for accepting check deposits via the internet using browser-based technology	2008-07-01	2006-02-09	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US7333953</a> Method and apparatus for integrated payments processing and decisioning for internet transactions	2008-02-19	2000-10-31	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US7324970</a> Home asset management account	2008-01-29	2002-02-07	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US7191166</a> Method and system for comparing information contents	2007-03-13	2002-02-27	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6928465</a> Redundant email address detection and capture system	2005-08-09	2001-03-16	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6633193</a> Method of forming a switching device and structure therefor	2003-10-14	2002-04-08	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6618074</a> Central alarm computer for video security system	2003-09-09	1997-08-01	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6336102</a> Investment fund management method and system	2002-01-01	1995-08-07	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD446790</a> Icon for a computer display	2001-08-21	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD445426</a> Icon for a computer display	2001-07-24	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD440979</a> Icon for a computer display	2001-04-24	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD440575</a> Icon for a computer display	2001-04-17	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD439584</a> Icon for a computer display	2001-03-27	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD438873</a> Icon for a computer display	2001-03-13	2000-03-17	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6091771</a> Workstation for video security system	2000-07-18	1997-08-01	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US6069655</a> Advanced video security system	2000-05-30	1997-08-01	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US5933077</a> Apparatus and method for detecting undesirable connections in a system	1999-08-03	1997-06-20	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US5912619</a> Security system using optical sensors	1999-06-15	1997-12-31	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US5677672</a> System and method for arming an alarm system when an occupant fails to turn the system on	1997-10-14	1995-06-16	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">USD254179</a> Belt buckle	1980-02-12	1978-03-31	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US4171584</a> Sign assembly	1979-10-23	1977-06-02	80%
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<a href="#">US3862694</a> METHOD FOR REMOVING ARTICLES FROM ENVELOPES	1975-01-28	1974-05-28	80%

 ☐ US3508702 CREDIT CARD MAILING ASSEMBLY 1970-04-28 1968-11-01 80%  
Order selected items as PDF  

<b>Show:</b> <input type="checkbox"/> Thumbnail <input checked="" type="checkbox"/> Title <input type="checkbox"/> Derwent Title <input type="checkbox"/> Abstract <input type="checkbox"/> Assignee <input checked="" type="checkbox"/> Pub. Date <input checked="" type="checkbox"/> Filed <input type="checkbox"/> Priority Date <input type="checkbox"/> IPC Code <input checked="" type="checkbox"/> Score <a href="#">[ Check all ]</a>	<b>Sort by:</b> Score <b>Items per page:</b> 50 
---	---

 [Printer-friendly version](#)

<b>Legend</b>	
 — Free for US, EP and WO	<input checked="" type="checkbox"/> — \$3.00 for National Collections

**THOMSON**  
— \* —

Copyright © 1997-2008 The Thomson Corporation  
[Subscriptions](#) | [Web Seminars](#) | [Privacy](#) | [Terms & Conditions](#) | [Site Map](#) | [Contact Us](#) | [Help](#)